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(h) Certify the accuracy and truthfulness of the information provided in their Agreement on Form CCC-850; and

(i) Allow verification by CCC of all information provided. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a determination of ineligibility.

(j) Meet all other conditions for payment which are set out in the Agreement or in these regulations or otherwise.

§ 1424.5 Application process.

To receive payments under this program during a FY, an eligible producer must:

(a) Have an approved Agreement in accordance with §1424.4(b) and an Agreement number assigned by KCCO under §1424.4(c);

(b) Obtain an Application, Form CCC-850-A, from the KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141-6205 or via the internet at: www.fsa.usda.gov/daco/bioenergy/bio-energy.htm;

(c) Submit applications for each quarter. Submit the last quarterly application of the FY within 30 calendar days of the end of the FY for which payment is requested. If the actual deadline is a non-workday, the deadline will be the next business day;

(d) Submit other relevant documents as required by CCC for the specific commodity; and

(e) Certify with respect to the accuracy and truthfulness of the information provided.

§ 1424.6 Eligibility determinations.

(a) Applicants will, after Agreements are submitted, if:

(1) Determined eligible, receive notification of eligibility;

(2) Determined ineligible, be notified in writing of ineligibility for program participation and reason for the determination; or

(3) Additional information is needed for CCC to determine eligibility, be contacted for additional supporting documentation.

(b) Applicants will, after Applications are submitted, if:

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(1) Determined eligible, receive payment;

(2) Determined ineligible, be notified in writing of ineligibility for payment and reason for determination; or

(3) Additional information is needed for CCC to determine eligibility, be contacted for additional supporting documentation.

§ 1424.7 [Reserved]

§ 1424.8 Payment amounts.

(a) Eligible producer may be paid the amount specified in this section, subject to the availability of funds. Funds shall be considered available only to the extent determined appropriate by CCC. Unless otherwise determined by CCC, that amount shall be no more than \$150 million in FY 2001 and no more than an additional \$150 million in FY 2002.

(b) Eligible producer must sign an agreement to participate. Such an agreement must be signed during the designated sign-up period. Thereafter, producers must file a report of their production at all locations for the program year to date through the respective quarter for each such report. Such reports must comply with the terms of the agreement and these regulations.

(c) Persons will be eligible for payments only to the extent that their production of eligible energy from eligible inputs is, for the program year to date, as compared to the comparable portion of the previous year, in excess of their total comparable production at all locations. Producers will not be paid twice for the same increase and any decline in relative production between quarters will require a comparable refund as specified below. That is, for example, if a producer were to be paid, at the end of the first quarter, for an increase of 500 units of energy production, but by the end of the second quarter that producer's production, for the year to date, was down to a net increase for the year of 450 units, then a refund would be due for the loss of the corresponding 50 units of net extra production. For these purposes unless CCC shall agree otherwise in order to facilitate the program, "all locations" for these and other purposes within these

regulations shall mean any and all locations in which the producer had an interest now (in the current FY) or in the previous FY, irrespective of whether the producer still has such an interest in that facility. Eligibility determinations will be made on the basis of aggregating production figures from all such locations and shall include production by all persons at those locations for the current and preceding FY, not just the production of the producer. Also, the CCC may in the program agreement require that the producer certify the amount of the actual increased use of agricultural commodities for energy production at all such locations for the relevant period and make adjustment in the formulaic payments that would otherwise be made to the producer if there is a difference between that certification and the amount of increased commodity use as calculated under the formula.

(d) The submitted agreements filed during the sign-up period will require that the applicant set out the expected increase in production and other information as the agency may demand. Based on expected commodity prices, following the formula set out in this section, all such submissions will be assigned an expected value. Should the total expected value of all such agreements exceed the available funding, then a proration factor will be developed to factor the agreements down to the funding made available by CCC.

(e) Subject to the provisions of this section and conditions specified in the Agreement, a producer's payment eligibility shall be adjusted at the end of each quarter, and figured as follows:

(1) The extra production in energy from eligible inputs will be converted to gross payable bushels (or other applicable agricultural unit) by, unless otherwise determined by CCC:

(i) Allowing, as applicable, 1 bushel of corn for each increase of 2.5 gallons of ethanol;

(ii) Allowing, as applicable, 1 bushel of soybeans for each increase of 1.4 gallons of biodiesel production;

(iii) Such other method for other eligible agricultural commodities as CCC deems appropriate.

(2) The gross payable bushels, or other gross units, calculated under

paragraph (e)(1) of this section shall then be converted to a net payable bushel (or other unit amount) by:

(i) For producers whose annual bio-energy production is less than 65 million gallons, allowing 1 net payable bushel for every 2.5 gross payable bushels of corn or soybeans, or by allowing a similar conversion in the event that there are other eligible agricultural commodities involved in the calculation;

(ii) For producers whose annual bio-energy production is equal to or more than 65 million gallons, allowing 1 net payable bushel for every 3.5 gross payable bushels of corn or soybeans, or by allowing a similar conversion in the event that there are other eligible commodities involved;

(3) The net payable bushel (or other unit) agricultural commodity amount calculated under paragraph (e)(2) of this section, shall be then converted to a gross payment by multiplying that commodity amount by the per unit value for the commodity determined as follows:

(i) For those agricultural commodities with established terminal market prices, the CCC will use the applicable terminal market price for the last day of the program quarter announced daily by the KCCO, FSA, adjusted by the county average differential for the county in which the plant is located and the applicable quality factors determined by CCC. For this purpose the terminal market and differential used by CCC in determining different values for different locations will, to the extent practical, be the same as that used for producers under other major CCC commodity programs for determining marketing loan gains and other matters.

(ii) For those agricultural commodities that do not, as determined by CCC, have acceptable established terminal prices, the price shall be as determined by CCC based on such market data as appears to be appropriate for a fair evaluation.

(4) The gross payment calculated under paragraph (e)(3) of this section shall be reduced to a net payment by multiplying the gross payment figure by the proration factor determined under paragraph (d) of this section.

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(5) Subject to other provisions of this section, producers shall be paid the net current payment, if positive, determined for the first quarter.

(6) After the first quarter, adjustments shall be made based on changes in production. New or renewed increases shall be paid using the formula set out above using current per unit values. Refunds, when due, shall be due at the per unit values at which they were paid unless CCC determines otherwise.

(7) If despite or in the absence of a proration under paragraph (d) of this section funds shall not be sufficient to cover payments due for any quarter then CCC shall prorate, or further prorate, the claims in such manner as CCC deems fit.

(8) No producer may receive more than five percent of the available funding for this program and determinations of payment eligibility shall take that limit into account.

§ 1424.9 Reports required.

Once an eligible producer has submitted an Agreement, Form CCC-850, that producer shall file information for each bioenergy producing facility quarterly through the end of the applicable FY as specified by CCC.

§ 1424.10 Succession and control of facilities and production.

A person who obtains a facility which is under contract under this part may request permission to succeed to the program contract and CCC may grant such request if it is determined that permitting such succession would serve the purposes of the program. As determined to be appropriate, CCC may require the consent of the original party to such succession and likewise CCC may terminate a contract and demand a full refund of payments made if a contracting party loses control of a facility whose increased production is the basis of a program payment or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 1424.11 Maintenance and inspection of records.

For the purpose of verifying compliance with the requirements of this

part, each eligible producer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that is within the control of such entity for not less than 3 years from the payment date.

§ 1424.12 Appeals.

(a) Any producer who is subject to an adverse determination made under this part shall have a right to appeal the determination by filing a written request with the Deputy Administrator at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250-0550.

(b) Any producer who believes that they have been adversely affected by a determination under this part must seek review with the Deputy Administrator within thirty days of such determination, unless provided with notice by FSA which provides a different time for appealing.

(c) Any producer who believes that they have been adversely affected by a determination by the Agency, must seek review with the Deputy Administrator before any other review may be requested within the Agency.

§ 1424.13 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:

(1) Adopted any scheme or device which tends to defeat the purpose of the program in this part;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the bioenergy producer's actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.